

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

**§ 1099c-2. Review of regulations****(a) Review required**

The Secretary shall review each regulation issued under this subchapter and part C of subchapter I of chapter 34 of title 42 that is in effect at the time of the review and applies to the operations or activities of any participant in the programs assisted under this subchapter and part C of subchapter I of chapter 34 of title 42. The review shall include a determination of whether the regulation is duplicative, or is no longer necessary. The review may involve one or more of the following:

- (1) An assurance of the uniformity of interpretation and application of such regulations.
- (2) The establishment of a process for ensuring that eligibility and compliance issues, such as institutional audit, program review, and recertification, are considered simultaneously.
- (3) A determination of the extent to which unnecessary costs are imposed on institutions of higher education as a consequence of the applicability to the facilities and equipment of such institutions of regulations prescribed for purposes of regulating industrial and commercial enterprises.

**(b) Regulatory and statutory relief for small volume institutions**

The Secretary shall review and evaluate ways in which regulations under and provisions of this chapter and part C of subchapter I of chapter 34 of title 42 affecting institution of higher education (other than institutions described in section 1002(a)(1)(C) of this title), that have received in each of the two most recent award years prior to October 7, 1998, less than \$200,000 in funds through this subchapter and part C of subchapter I of chapter 34 of title 42, may be improved, streamlined, or eliminated.

**(c) Consultation**

In carrying out subsections (a) and (b) of this section, the Secretary shall consult with relevant representatives of institutions participating in the programs authorized by this subchapter and part C of subchapter I of chapter 34 of title 42.

(Pub. L. 89-329, title IV, § 498B, as added Pub. L. 105-244, title IV, § 495, Oct. 7, 1998, 112 Stat. 1764; amended Pub. L. 110-315, title IV, § 498, Aug. 14, 2008, 122 Stat. 3328.)

## AMENDMENTS

2008—Subsec. (d). Pub. L. 110-315 struck out subsec. (d) which required the Secretary to submit reports to Congress.

## EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

**PART H—COMPETITIVE LOAN AUCTION PILOT PROGRAM**

## CODIFICATION

This part was added as part I of title IV of Pub. L. 89-329 by Pub. L. 110-84, title VII, § 701, Sept. 27, 2007, 121 Stat. 808. The letter designation of this part was changed from “I” to “H” for codification purposes. See Codification note preceding section 1087a of this title.

**§ 1099d. Competitive loan auction pilot program****(a) Definitions**

In this section:

**(1) Eligible Federal PLUS Loan**

The term “eligible Federal PLUS Loan” means a loan described in section 1078-2 of this title made to a parent of a dependent student who is a new borrower on or after July 1, 2009.

**(2) Eligible lender**

The term “eligible lender” has the meaning given the term in section 1085 of this title.

**(b) Pilot program**

The Secretary shall carry out a pilot program under which the Secretary establishes a mechanism for an auction of eligible Federal PLUS Loans in accordance with this subsection. The pilot program shall meet the following requirements:

**(1) Planning and implementation**

During the period beginning on September 27, 2007, and ending on June 30, 2009, the Secretary shall plan and implement the pilot program under this subsection. During the planning and implementation, the Secretary shall consult with other Federal agencies with knowledge of, and experience with, auction programs, including the Federal Communication Commission and the Department of the Treasury.

**(2) Origination and disbursement; applicability of section 1078-2**

Beginning on July 1, 2009, the Secretary shall arrange for the origination and disbursement of all eligible Federal PLUS Loans in accordance with the provisions of this subsection and the provisions of section 1078-2 of this title that are not inconsistent with this subsection.

**(3) Loan origination mechanism**

The Secretary shall establish a loan origination auction mechanism that meets the following requirements:

**(A) Auction for each State**

The Secretary administers an auction under this paragraph for each State, under which eligible lenders compete to originate eligible Federal PLUS Loans under this paragraph at all institutions of higher education within such State.

**(B) Prequalification process**

The Secretary establishes a prequalification process for eligible lenders

desiring to participate in an auction under this paragraph that contains, at a minimum—

(i) a set of borrower benefits and servicing requirements each eligible lender shall meet in order to participate in such an auction;

(ii) an assessment of each such eligible lender's capacity, including capital capacity, to participate effectively; and

(iii) a commitment from such eligible lender that, if the lender has a winning bid under subparagraph (F), the lender will enter into the agreement required under subparagraph (G).

**(C) Timing and origination**

Each State auction takes place every 2 years, and the eligible lenders with the winning bids for the State are the only eligible lenders permitted to originate eligible Federal PLUS Loans made under this paragraph for the cohort of students at the institutions of higher education within the State until the students graduate from or leave the institutions of higher education.

**(D) Bids**

Each eligible lender's bid consists of the amount of the special allowance payment (after the application of section 1087-1(b)(2)(I)(v) of this title) the eligible lender proposes to accept from the Secretary with respect to the eligible Federal PLUS Loans made under this paragraph in lieu of the amount determined under section 1087-1(b)(2)(I) of this title.

**(E) Maximum bid**

The maximum bid allowable under this paragraph shall not exceed the amount of the special allowance payable on eligible Federal PLUS Loans made under this paragraph computed under section 1087-1(b)(2)(I) of this title (other than clauses (ii), (iii), (iv), and (vi) of such section), except that for purposes of the computation under this subparagraph, section 1087-1(b)(2)(I)(i)(III) of this title shall be applied by substituting "1.79 percent" for "2.34 percent".

**(F) Winning bids**

The winning bids for each State auction shall be the 2 bids containing the lowest and the second lowest proposed special allowance payments, subject to subparagraph (E).

**(G) Agreement with Secretary; compliance**

**(i) Agreement**

Each eligible lender having a winning bid under subparagraph (F) shall enter into an agreement with the Secretary under which the eligible lender—

(I) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—

(aa) seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;

(bb) is eligible for an eligible Federal PLUS Loan; and

(cc) elects to borrow from the eligible lender; and

(II) agrees to accept a special allowance payment (after the application of section 1087-1(b)(2)(I)(v) of this title) from the Secretary with respect to the eligible Federal PLUS Loans originated under subclause (I) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.

**(ii) Compliance**

If an eligible lender with a winning bid under subparagraph (F) fails to enter into the agreement required under clause (i), or fails to comply with the terms of such agreement, the Secretary may sanction such eligible lender through one or more of the following:

(I) The assessment of a penalty on such eligible lender for any eligible Federal PLUS Loans that such eligible lender fails to originate under this paragraph in accordance with the agreement required under clause (i), in the amount of the additional costs (including the amounts of any increase in special allowance payments) incurred by the Secretary in obtaining another eligible lender to originate such eligible Federal PLUS Loans. The Secretary shall collect such penalty by—

(aa) reducing the amount of any payments otherwise due to such eligible lender from the Secretary by the amount of the penalty; or

(bb) requesting any other Federal agency to reduce the amount of any payments due to such eligible lender from such agency by the amount of the penalty, in accordance with section 3716 of title 31.

(II) A prohibition of bidding by such lender in other auctions under this section.

(III) The limitation, suspension, or termination of such eligible lender's participation in the loan program under part B.

(IV) Any other enforcement action the Secretary is authorized to take under part B.

**(H) Sealed bids; confidentiality**

All bids are sealed and the Secretary keeps the bids confidential, including following the announcement of the winning bids.

**(I) Eligible lender of last resort**

**(i) In general**

In the event that there is no winning bid under subparagraph (F), the students at the institutions of higher education within the State that was the subject of the auction shall be served by an eligible lender of last resort, as determined by the Secretary.

**(ii) Determination of eligible lender of last resort**

Prior to the start of any auction under this paragraph, eligible lenders that desire

to serve as an eligible lender of last resort shall submit an application to the Secretary at such time and in such manner as the Secretary may determine. Such application shall include an assurance that the eligible lender will meet the prequalification requirements described in subparagraph (B).

**(iii) Geographic location**

The Secretary shall identify an eligible lender of last resort for each State.

**(iv) Notification timing**

The Secretary shall not identify any eligible lender of last resort until after the announcement of all the winning bids for a State auction for any year.

**(v) Maximum special allowance**

The Secretary is authorized to set a special allowance payment that shall be payable to a lender of last resort for a State under this subparagraph, which special allowance payment shall be kept confidential, including following the announcement of winning bids. The Secretary shall set such special allowance payment so that it incurs the lowest possible cost to the Federal Government, taking into consideration the lowest bid that was submitted in an auction for such State and the lowest bid submitted in a similar State, as determined by the Secretary.

**(J) Guarantee against losses**

Each eligible Federal PLUS Loan originated under this paragraph shall be insured by a guaranty agency in accordance with part B, except that, notwithstanding section 1078(b)(1)(G) of this title, such insurance shall be in an amount equal to 99 percent of the unpaid principal and interest due on the loan.

**(K) Loan fees**

The Secretary shall not collect a loan fee under section 1087-1(d) of this title with respect to an eligible Federal Plus Loan originated under this paragraph.

**(L) Consolidation**

**(i) In general**

An eligible lender who is permitted to originate eligible Federal PLUS Loans for a borrower under this paragraph shall have the option to consolidate such loans into 1 loan.

**(ii) Notification**

In the event a borrower with eligible Federal PLUS Loans made under this paragraph wishes to consolidate the loans, the borrower shall notify the eligible lender who originated the loans under this paragraph.

**(iii) Limitation on eligible lender option to consolidate**

The option described in clause (i) shall not apply if—

(I) the borrower includes in the notification in clause (ii) verification of con-

solidation terms and conditions offered by an eligible lender other than the eligible lender described in clause (i); and

(II) not later than 10 days after receiving such notification from the borrower, the eligible lender described in clause (i) does not agree to match such terms and conditions, or provide more favorable terms and conditions to such borrower than the offered terms and conditions described in subclause (I).

**(iv) Consolidation of additional loans**

If a borrower has a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 1078-2 of this title and seeks to consolidate such loan with an eligible Federal PLUS Loan made under this paragraph, then the eligible lender that originated the borrower's loan under this paragraph may include in the consolidation under this subparagraph a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 1078-2 of this title, but only if—

(I) in the case of a Federal Direct PLUS Loan, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions that would otherwise be available to the borrower if the borrower consolidated such loans in the loan program under part C; or

(II) in the case of a loan made on behalf of a dependent student under section 1078-2 of this title, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions offered by an eligible lender other than the eligible lender that originated the borrower's loans under this paragraph.

**(v) Special allowance on consolidation loans that include loans made under this paragraph**

The applicable special allowance payment for loans consolidated under this paragraph shall be equal to the lesser of—

(I) the weighted average of the special allowance payment on such loans, except that in calculating such weighted average the Secretary shall exclude any Federal Direct PLUS Loan included in the consolidation; or

(II) the result of—

(aa) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period; plus

(bb) 1.59 percent.

**(vi) Interest payment rebate fee**

Any loan under section 1078-3 of this title consolidated under this paragraph shall not be subject to the interest payment rebate fee under section 1078-3(f) of this title.

**(c) Required initial evaluation**

The Secretary and Secretary of the Treasury shall jointly conduct an evaluation, in consultation with the Office of Management and Budget, the Congressional Budget Office, and the Comptroller General, of the pilot program carried out by the Secretary under this section. The evaluation shall determine—

- (1) the extent of the savings to the Federal Government that are generated through the pilot program, compared to the cost the Federal Government would have incurred in operating the PLUS loan program under section 1078-2 of this title in the absence of the pilot program;
- (2) the number of lenders that participated in the pilot program, and the extent to which the pilot program generated competition among lenders to participate in the auctions under the pilot program;
- (3) the number and volume of loans made under the pilot program in each State;
- (4) the effect of the transition to and operation of the pilot program on the ability of—
  - (A) lenders participating in the pilot program to originate loans made through the pilot program smoothly and efficiently;
  - (B) institutions of higher education participating in the pilot program to disburse loans made through the pilot program smoothly and efficiently; and
  - (C) parents to obtain loans made through the pilot program in a timely and efficient manner;
- (5) the differential impact, if any, of the auction among the States, including between rural and non-rural States; and
- (6) the feasibility of using the mechanism piloted to operate the other loan programs under part B of this subchapter.

**(d) Reports****(1) In general**

The Secretary and the Secretary of the Treasury shall submit to the authorizing committees—

- (A) not later than September 1, 2010, a preliminary report regarding the findings of the evaluation described in subsection (c);
- (B) not later than September 1, 2012, an interim report regarding such findings; and
- (C) not later than September 1, 2013, a final report regarding such findings.

**(2) Contents**

The Secretary shall include, in each report required under subparagraphs (A), (B), and (C) of paragraph (1), any recommendations, that are based on the findings of the evaluation under subsection (c), for—

- (A) improving the operation and administration of the auction; and
- (B) improving the operation and administration of other loan programs under part B.

(Pub. L. 89-329, title IV, § 499, as added Pub. L. 110-84, title VII, § 701, Sept. 27, 2007, 121 Stat. 808; amended Pub. L. 110-315, title IV, § 499, Aug. 14, 2008, 122 Stat. 3328.)

**AMENDMENTS**

2008—Subsec. (b)(3)(B)(iii). Pub. L. 110-315, § 499(1)(A), added cl. (iii).

Subsec. (b)(3)(G). Pub. L. 110-315, § 499(1)(B), added subpar. (G) and struck out former subpar. (G). Text of former subpar. (G) read as follows: “Each eligible lender having a winning bid under subparagraph (F) enters into an agreement with the Secretary under which the eligible lender—

“(i) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—

“(I) seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;

“(II) is eligible for an eligible Federal PLUS Loan; and

“(III) elects to borrow from the eligible lender; and

“(ii) agrees to accept a special allowance payment (after the application of section 1087-1(b)(2)(I)(v) of this title) from the Secretary with respect to the eligible Federal PLUS Loans originated under clause (i) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.”

Subsec. (b)(3)(J). Pub. L. 110-315, § 499(1)(C), added subpar. (J) and struck out former subpar. (J). Text of former subpar. (J) read as follows: “The Secretary guarantees the eligible Federal PLUS Loans made under this paragraph against losses resulting from the default of a parent borrower in an amount equal to 99 percent of the unpaid principal and interest due on the loan.”

Subsecs. (c), (d). Pub. L. 110-315, § 499(2), added subsecs. (c) and (d).

**EFFECTIVE DATE**

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110-84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.

**PART I—TRANSFERRED****CODIFICATION**

Part J of title IV of Pub. L. 89-329, comprising this part, was redesignated part F of title III of Pub. L. 89-329 by Pub. L. 110-315, title III, § 316(a)(2), Aug. 14, 2008, 122 Stat. 3185, and transferred to part F (§ 1067q) of subchapter III of this chapter.

**§ 1099e. Transferred****CODIFICATION**

Section, Pub. L. 89-329, title IV, § 499A, as added Pub. L. 110-84, title VIII, § 802, Sept. 27, 2007, 121 Stat. 817, which related to investment in historically Black colleges and universities and other minority-serving institutions, was transferred to section 1067q of this title.

**SUBCHAPTER V—DEVELOPING INSTITUTIONS****CODIFICATION**

Title V of the Higher Education Act of 1965, comprising this subchapter, was originally enacted by Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1254; amended Pub. L. 90-35, June 29, 1967, 81 Stat. 81; Pub. L. 90-83, Sept. 11, 1967, 81 Stat. 195; Pub. L. 90-247, Jan. 2, 1968, 81 Stat. 783; Pub. L. 90-575, Oct. 16, 1968, 82 Stat. 1014; Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 121; Pub. L. 92-318, June 23, 1972, 86 Stat. 235; Pub. L. 93-380, Aug. 21, 1974, 88 Stat. 484; Pub. L. 94-482, Oct. 12, 1976, 90 Stat. 2081; Pub. L. 95-43, June 15, 1977, 91 Stat. 213; Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143; Pub. L. 96-49, Aug. 13, 1979, 93 Stat. 351; Pub. L. 96-88, Oct. 17, 1979, 93 Stat. 668; Pub. L. 96-374, Oct. 3, 1980, 94 Stat. 1367; Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 357; Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322; Pub. L. 98-558, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-386, Aug. 22, 1986, 100 Stat. 821; Pub. L. 99-498, Oct. 17, 1986, 100 Stat. 1268; Pub. L. 100-50, June 3, 1987, 101 Stat. 335; Pub. L. 101-226, Dec. 12, 1989, 103 Stat. 1928; Pub. L. 102-325, July